

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

ISO New England Inc.

Docket No. ER06-1541-000

ORDER ACCEPTING FILING

(Issued November 7, 2006)

1. On September 28, 2006, ISO New England Inc. (ISO-NE) submitted pursuant to section 205 of the Federal Power Act (FPA),¹ an emergency request for a limited and temporary change in a requirement of ISO-NE's Financial Assurance Policy (FAP) with respect to amounts at issue in certain Requested Billing Adjustments (RBAs) filed with ISO-NE under ISO-NE's Billing Policy. ISO-NE also requests waiver of the 60-day prior notice requirement contained in the FPA. In this order, we will accept the proposed changes as discussed below, to be effective September 29, 2006, as requested.

2. ISO-NE's September 28 Filing proposes revisions to the FAP by temporarily suspending the requirement for certain customers to post additional financial assurance due to "exigent circumstances" resulting from the RBAs.

Background

The New England RBA Process

3. ISO-NE's Billing Policy states that an ISO-NE customer may file an RBA with ISO-NE to "dispute the amount due on any fully paid monthly invoice and/or any amount believed to be due or owed..."² The amount in dispute is defined by ISO-NE's Billing Policy as the "Disputed Amount." After an RBA is submitted by an ISO-NE customer to ISO-NE, it is reviewed by ISO-NE. ISO-NE customers also have the option of initiating a proceeding with the Commission or other jurisdictional regulatory body to investigate the RBA, but only after filing the RBA with ISO-NE.

¹ 16 U.S.C. § 824d (2000).

² ISO-NE Billing Policy, § 6.1.

The RBAs at Issue

4. The RBAs that were the impetus for the instant filing's revisions to ISO-NE's FAP stem from ISO-NE's dispatch of generation for the period after April 14, 2006 in the Southeastern Massachusetts Reliability Region (SEMA).

5. Each Operating Day, ISO-NE conducts a Reserve Adequacy Analysis (RAA), which analyzes the results of the Day-Ahead Energy Market and considers whether to commit additional generating units out of merit to ensure reliability for the upcoming Operating Day. ISO-NE can commit units under a variety of designations, including as a Local Second Contingency Protection Resource (LSCPR)³ or as a Special Constraint Resource (SCR).⁴ These two designations are not mutually exclusive and can occasionally overlap. For example, a unit could be needed to run out of merit to provide reliability support for both the bulk power system as a LSCPR and to relieve a local constraint as a SCR.

6. Generating units that are committed out of merit are eligible for Net Commitment Period (NCPC) credits, which are paid for by ISO-NE's Market Participants. Specifically, LSCPR NCPC charges are assessed to Real-Time Load Obligations for locations within the affected region, while SCR NCPC charges are assessed solely to the Transmission Owner or distribution company requesting that the affected generating unit be designated as an SCR.

7. On January 27, 2006, NSTAR Companies (NSTAR) – the local transmission owner – requested that ISO-NE commit at least one of the two Canal generating units⁵ located within SEMA to operate “for Cape Cod reliability.” In response, ISO-NE flagged the two Canal units as SCRs, and committed at least one of the two units on a daily and continuous basis from January 28 through April 14, billing NSTAR for the NCPC charges. On April 14, 2006, ISO-NE determined that the Canal units would be needed as LSCPRs rather than SCRs, and ran the Canal units as LSCPRs, billing the SEMA region for all NCPC charges.

³ An LSCPR is defined as a resource that is identified by ISO-NE as necessary to maintain Operating Reserve requirements and meet the New England Reliability Council (NERC), Northeast Power Coordinating Council (NPCC), and ISO-NE reliability criteria that exceed those resources required to meet first contingency reliability criteria within a region.

⁴ An SCR is a resource that is intended to meet local reliability needs not reflected in ISO-NE's systems. The request for a unit to be designated as an SCR is submitted by a Transmission Owner or distribution company.

⁵ The Canal Units are owned by Mirant Corporation and have a collective generating capacity of 1,112 MW.

8. NSTAR has submitted RBAs regarding the NCPC charges assessed to NSTAR following ISO-NE's designation of the two Canal units as SCRs for the period beginning January 28, 2006 and ending April 14, 2006. In response, ISO-NE changed the "flagged" status of those units to LSCPRs for the January 28 – April 14 timeframe, relieving NSTAR of the NCPC charges burden. ISO-NE's decision to retroactively change the status of the LSCPRs resulted in NCPC charges being assessed to load-serving entities in SEMA. SEMA load-serving entities subsequently filed RBAs regarding these NCPC charges for the January 28 – April 14 period. In addition, since the two Canal units remained flagged as LSCPRs for the post-April 14 period, the NCPC charges were continually billed to the same SEMA load-serving entities. As such, the SEMA load-serving entities filed additional RBAs regarding these NCPC charges for the post-April 14 period.

The FAP

9. The ISO-NE FAP requires financial assurance from its customers to protect other ISO-NE customers from the risk of non-payment. Non-municipal customers, such as NSTAR and the SEMA load-serving entities, must post collateral at least equal to:

the sum of (i) 100 percent of the amount of financial assurance required under [the ISO-NE FAP] with respect to that Non-Municipal Market Participant's [Firm Transmission Rights] obligations, plus (ii) *100 percent of "Disputed Amounts," as defined in the [ISO-NE] Billing Policy, received by that Non-Municipal Market Participant*, plus (iii) 3.5 times that Non-Municipal Market Participants' Excess Obligations.⁶

ISO-NE's Proposed Revision to the FAP

10. The instant filing proposes to temporarily add a new section I.10 to the ISO-NE Tariff, stating that customers will not be required to provide additional financial assurance due to Disputed Amounts that are the result of the RBAs relating to the post-April 14 period in the SEMA region. The proposed new section I.10 also stipulates that ISO-NE will make a filing removing section I.10 within sixty days following resolution of all post-April 14 RBAs in the SEMA region.

11. ISO-NE states that there are two reasons for the proposed revision in the instant filing. First, ISO-NE notes that if the post-April 14 RBAs filed by load-serving entities in SEMA are granted by ISO-NE, or if the SEMA load-serving entities are granted subsequent relief, ISO-NE will then have to determine which of its customers should be

⁶ ISO-NE Financial Assurance Policy for Market Participants (ISO-NE's Transmission, Markets, and Services Tariff, FERC Electric Tariff No. 3, Exhibit IA), § II.C (emphasis added).

deemed to have received the pertinent Disputed Amounts, or are otherwise required to increase their financial assurance due to the post-April 14 RBAs. According to ISO-NE, this task of determining which ISO-NE customers should increase their financial assurance policies will be difficult to accomplish.

12. Specifically, ISO-NE ponders several possibilities. ISO-NE states that an argument could be made that the Canal units should have been flagged as SCRs for the post-April 14 period, a determination that would increase the required financial assurance for NSTAR. ISO-NE points out that it could be argued that the owner of the Canal units that received NCPC credits to cover its costs of operating as directed by ISO-NE due to LSCPR needs should be required to provide additional financial assurance. ISO-NE describes other possibilities, including that all of ISO-NE customers should provide additional financial assurance based on their relative payment obligations under a hypothesis that an “erroneous” ISO-NE reliability determination might trigger the backstopping mechanisms of the ISO-NE Tariff.⁷ ISO-NE also states that it could be argued that section III.3.6 and III.3.7 of the ISO-NE Tariff would prohibit ISO-NE from making corrections, a prohibition that would maintain allocation of the Canal units’ NCPC charges to SEMA load-serving entities and deny the post-April 14 RBAs.

13. Second, ISO-NE argues that even if it were possible to accurately determine which of ISO-NE’s customers should be responsible for posting additional financial assurance to account for the Canal units’ NCPC charges, the imposition of this additional financial assurance requirement would result in significant and potentially crippling financial burdens on ISO-NE’s affected customers. ISO-NE points out that the cumulative NCPC dollar amount related to the post-April 14 treatment of the Canal units as an LSCPR is approximately \$50 million.⁸ This number will continue to grow until a resolution of the RBAs is reached. ISO-NE claims, therefore, that the substantial size of the Disputed Amounts – and the related required increase to affected customers’ financial assurances – could financially cripple many market participants. ISO-NE argues that even market participants with resources to meet the additional financial assurance may find it preferable to exit the New England markets.

14. ISO-NE states that it has Commission-granted authority to submit the proposed revisions in the instant filing. Specifically, ISO-NE claims that the instant filing is made under the “Exigent Circumstances” provisions of the ISO-NE Tariff.⁹ According to ISO-NE, the “Exigent Circumstances” provision of the ISO-NE Tariff gives ISO-NE the

⁷ Section I.5.3 of the ISO-NE Tariff.

⁸ This amount covers the period from April 15, 2006 through September 21, 2006 and is comprised of the costs associated with the Canal Units’ provision of energy and reliability services.

⁹ Section 11.2 of the ISO-NE Participants Agreement.

authority to file with the Commission, pursuant to section 205 of the FPA, an amended “Market Rule, Operating Procedure, Manual, Reliability Standard, provision of the Information Policy..., [or] General Tariff Provision...”¹⁰ when Exigent Circumstances are present. The ISO-NE Participants Agreement defines “Exigent Circumstances” as circumstances in which ISO-NE determines in good faith that failure to immediately implement a change (i) would substantially and adversely affect (A) system reliability or security, or (B) the competitiveness or efficiency of the New England Markets, and (ii) invoking the procedures set forth in section 11.1, 11.3, or 11.4¹¹ of the Participants Agreement would not allow for timely redress of ISO-NE’s concerns.

15. ISO-NE requests an effective date for the proposed revision of September 29, 2006.

Notices and Responsive Filings

16. Notice of ISO-NE’s filing was published in the *Federal Register*, 71 Fed. Reg. 59,101 (2006), with protests and interventions due on or before October 10, 2006. Northeast Utilities Service Company on behalf of Northeast Utilities Companies and Select Energy, Inc., on its own behalf, jointly filed a motion to intervene. NSTAR, on behalf of its affiliates Boston Edison Company, Cambridge Electric Light Company, and Commonwealth Electric Company, filed a motion to intervene out of time. The New England Power Pool Participants (NEPOOL) Committee also filed a motion to intervene. The Competitive Suppliers in Southeastern Massachusetts (SEMA Suppliers) filed a motion to intervene and comments. ISO-NE filed a motion to strike the SEMA Suppliers’ comments, or, in the alternative, file reply comments to SEMA Suppliers’ comments.

17. In its comments, SEMA Suppliers explain that they strongly dispute ISO-NE’s original decision to impose (on the SEMA Suppliers) the NCPC charges for the Canal units. SEMA Suppliers argue that ISO-NE’s original decision was unjust, unreasonable, and in contravention of the ISO-NE Tariff. However, SEMA Suppliers note that they do not oppose the relief requested in ISO-NE’s instant filing and view ISO-NE’s proposed FAP revision as “prudent.”¹²

¹⁰ *Id.*

¹¹ Sections 11.1, 11.3, and 11.4 of the Participants Agreement provide a process for ISO-NE to make filings with the Commission pursuant to section 205 for Market Rule changes, *et al.*, absent Exigent Circumstances.

¹² SEMA Suppliers’ comments at 3.

Discussion

18. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2006), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. NSTAR's motion to intervene out of time is accepted for good cause shown and serves to make NSTAR and its affiliates parties to this proceeding. We will grant the ISO-NE's request for waiver of the 60-day prior notice requirement.¹³

19. We will accept ISO-NE's proposed revision to its FAP to not require additional financial assurance from its customers due to Disputed Amounts relating to post-April 14 RBAs in the SEMA region, effective September 29, 2006.

20. The proposed revision to the ISO-NE FAP in the instant filing is reasonable while the post-April 14 RBAs are being considered by ISO-NE. Requiring "100 percent of Disputed Amounts"¹⁴ at this time could have an adverse impact on competition in the New England markets because it could be more economically advantageous for some market participants to exit the market rather than stay in the market and post the excessively high financial assurance related to the Disputed Amounts in the SEMA RBAs. We also note that SEMA Suppliers do not object to the FAP revision in the instant filing; rather, SEMA Suppliers object to the circumstances that gave rise to the requested FAP revision.

21. Though ISO-NE is requesting a temporary change to its tariff, and not requesting a tariff waiver, we will use similar discretion in evaluating the merits of ISO-NE's request because the requested relief is similar. In the past, the Commission has granted one-time waivers of tariffs to alleviate the effects of errors by ISOs or other entities. Specifically, in the past, the Commission has granted tariff waivers where: (1) the underlying error was made in good faith; (2) the waiver was of limited scope; (3) a concrete problem needed to be remedied; and (4) the waiver did not have undesirable consequences, such as harming third parties.¹⁵ ISO-NE's "error" in flagging the Canal units was made in good faith, and the requested relief is temporary and applies only to the SEMA RBAs.

¹³ *Central Hudson Gas & Electric Corp.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

¹⁴ ISO-NE Financial Assurance Policy for Market Participants (ISO-NE's Transmission, Markets, and Services Tariff, FERC Electric Tariff No. 3, Exhibit IA), § II.C.

¹⁵ *See, e.g., Wisvest-Connecticut*, 101 FERC ¶ 61,372 at 62,551 (2002); *GreatLakes Gas Transmission Limited Partnership*, 102 FERC ¶ 61,331 (2003); *TransColorado Gas Transmission Co.*, 102 FERC ¶ 61,330 (2003); and *Northern Border Pipeline Co.*, 76 FERC ¶ 61,141 (1996).

Further, the proposed change to the FAP seeks to remedy the problem of unnecessarily imposing large burdens of financial assurance on market participants. Finally, the proposed revision to the FAP will have no adverse impacts on third parties. The market participants affected by the SEMA RBAs must still post adequate financial assurance to protect other market participants.

22. We find that ISO-NE's filing is similar to the filings in past cases where the Commission has granted one-time waivers of tariffs to alleviate the effects of errors by ISOs or other entities.¹⁶ ISO-NE cannot determine at this time, with a reasonable degree of accuracy, which entities received the Disputed Amounts. Further, any relief granted to parties to the proceeding would require "conjecture" on the part of ISO-NE or the Commission as to which entities should be granted relief and how much relief should be granted. Therefore, removal of the Tariff requirement as it relates to this specific, narrowly-defined issue of the Disputed Amounts in the SEMA RBAs after April 14, 2006 is appropriate.

23. Although we recognize the concerns of SEMA Suppliers relating to the post-April 14 RBAs, we find their comment largely outside the scope of this proceeding, as the RBAs *per se* are not at issue in this proceeding. ISO-NE is currently considering the merits of the RBAs and will render a decision on the RBAs in time.¹⁷ We also note that SEMA Suppliers do not object to the proposed revision to the FAP in the instant filing.

¹⁶ *Id.*

¹⁷ ISO-NE and NEPOOL members have been working since June 2006 to sort through the RBAs. In August, ISO-NE, NEPOOL, and the disputing parties agreed to suspend the RBA process pending the outcome of discussions to settle this matter. Assistance in the settlement discussions has been provided by the Honorable Lawrence A. Brenner, who was appointed a settlement judge by the Chief Judge pursuant to a joint request by ISO-NE and NEPOOL. See *In the Matter of ISO New England Mediation (Bulk Power Operations in Southeastern Massachusetts)*, Order of Chief Judge Designating Settlement Judge (August 4, 2006) (subsequently assigned ISO-NE Docket No. ME06-2-000).

The Commission orders:

The ISO-NE's filing is accepted, as discussed in the body of this order, effective September 29, 2006.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.